

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 03-0011P

Gross and Adjusted Gross Income Tax
Calendar Years 1997, 1998, 1999, and 2000

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ISSUE(S)

I. **Tax Administration**—Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalties assessed.

STATEMENT OF FACTS

Taxpayer manufactures abrasive products used in industry and by consumers to cut, grind, shape, sharpen, or finish metal, glass, ceramic, plastic and wood. Taxpayer sells the products throughout the United States and in several foreign countries. The taxpayer had a sales office and distribution center in Indiana. Upon audit it was discovered that the taxpayer failed to report a significant portion of its Indiana sales for gross income tax. All sales were the result of the efforts of salesmen's activities conducted from the Indiana sales office.

Taxpayer's audit revealed that it failed to report Indiana destination sales shipped from out of state to Indiana customers that were serviced from the Indiana sales office.

To address the penalty issues, reference is made to taxpayer's letter dated December 5, 2002 that objects to the ten percent (10%) penalty for under payment of tax paid with its return and an additional ten percent (10%) penalty for the underpayment of its estimated payments.

Taxpayer states that its tax department did everything that responsible people could have been expected to do in order to comply with the tax laws of Indiana. Its estimates were based on the best information it had at the time the payments were made. Taxpayer further states that it has always filed its estimates and returns in a timely fashion and for those reasons feels that the penalties assessed are unreasonable.

I. **Tax Administration**—Penalty

DISCUSSION

Taxpayer was assessed a penalty at audit for calendar years 1997 through 2000 for failing to report Indiana destination sales in gross income. The underreporting was for over ninety percent of the gross income tax for all years at audit.

Taxpayer also received underpayment penalty assessments for the IT-20's it filed.

Taxpayer, in a letter dated December 5, 2002 protests the penalties assessed because it did everything possible in order to comply with the tax laws of Indiana. Taxpayer further states that its estimates were based on the best information it had at the time the payments were made and has always filed its estimates and returns in a timely fashion. Taxpayer requests a refund of the penalties.

Taxpayer, however, failed to report more than ninety percent (90%) of its gross income tax for all years at audit. Taxpayer has not provided reasonable cause for its failure to report all of its income.

The Underpayment Penalty for failing to correctly estimate and pay the quarterly estimated taxes was assessed concurrently with the audit.

To avoid the penalty, the quarterly estimate must equal at least twenty percent (20%) of the total income tax liability for the current taxable year or twenty-five percent (25%) of the final income tax liability for the prior taxable year. Taxpayer failed to provide reasonable cause to allow a penalty waiver.

FINDING

Taxpayer's protest is denied.